Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Local Exchange Carriers' Rates, Terms and Conditions for Expanded Interconnection for Special Access	CC Docket No. 93-162

OPPOSITION TO DIRECT CASES

Sprint Communications Company L.P.

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September 20, 1993

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SUMMARY

The Direct Cases of most of the LECs filed in support of their excessive expanded interconnection charges are incomplete. In particular, most LECs fail to justify as reasonable the high capital outlays upon which the extremely high nonrecurring charges are based. The Direct Cases reveal numerous methods employed by the LECs to inflate their charges. For example, rather than using embedded costs for Floor Space charges, many LECs use much higher market rental rates or current construction costs. Although the LECs are providing service to their competitors, such competitors should be treated as any other LEC customer, and the LECs must develop costs in a manner comparable to those for other access services. If the LECs assign costs greater than those which their own services must effectively bear, their competitors will be at a disadvantage. Also, the LECs should not be allowed to inflate their expanded interconnection charges by inclusion of equipment not required to provide interconnection service, such as repeaters.

Some LEC use nonrecurring charges to recover recurring expenses, other than depreciation and the cost of money. This methodology produces a mismatch between the revenue received and the expenses incurred, and should therefore be disallowed.

The Bureau requested further justification for many terms and conditions in the tariffed offerings. Sprint believes (1) that full prepayment of nonrecurring charges is unwarranted; (2) that BellSouth's requirement for $25 million of comprehensive general liability insurance is unjustified; (3) that the LECs'

liability for their negligence or willful misconduct should be similar to that for other access services; and (4) that U S West and Cincinnati Bell should be directed to permit the full use of letters of agency.

The LECs have the burden of proof to provide justification for their high expanded interconnection charges and they have largely failed to do so. The Commission therefore has the right to prescribe rates based on the information before it. Sprint recognizes that expanded interconnection is new and uncharted territory and that in some cases the cost variations may be due to the differences in the way the LECs have conceptualized the service and the associated costs. The Commission should also reject the use of any improper costing methodology which produces excessively high rates and direct carriers to remove any overly burdensome or restrictive terms and conditions.

Moreover, if the Commission is troubled by the extreme variations in the rates, and if it believes it has adequate basis for prescribing just and reasonable rates, it should do so. If the Commission does not feel it has an adequate record before it, it should identify those carriers whose costs are above average, give them an opportunity to submit (on an expedited basis) additional justification for their proposed cost levels, and require the filing of whatever additional data the Commission believes is necessary to enable it to prescribe lawful rates.

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OPPOSITION TO DIRECT CASES OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company. L.P. hereby opposes the direct cases of certain of the local exchange companies filed on August 20, 1993 in response to the Bureau's Order Designating Issues for Investigation, released July 23, 1993 ("Designation Order").

On October 19, 1992, the Commission released its Expanded Interconnection Order[1] which required Tier 1 local exchange companies ("LECs") to file tariffs offering expanded interconnection for special access services. On February 16, 1993 the LECs filed tariffs offering expanded interconnection for special access services. In its Order released June 9, 1993,[2]

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[1] Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369 (1992) (Expanded Interconnection Order), recon., 8 FCC Rcd 127 (1992) (Expanded Interconnection Modification Order), pets. for recon. pending, appeal pending sub nom. Bell Atlantic v. FCC, No. 92-1619 (D.C. Cir., filed Nov. 25, 1992).

[2] Ameritech Operating Companies, Transmittal Nos. 697, 711, et al., 8 FCC Rcd 4589 (Com. Car. Bur. 1993) (Special Access Tariff Order).

the Common Carrier Bureau ("Bureau"), inter alia, partially suspended the special access expanded interconnection tariffs and initiated an investigation of the tariffs. In the Designation Order, the Bureau designated numerous issues for investigation and required extensive information to evaluate the reasonableness of the tariffed offerings. The Bureau ordered the LECs to provide detailed cost data to support their proposed rates and to justify certain rate structures, terms and conditions in their tariffs.

Unfortunately, despite the Bureau's attempt to obtain detailed information concerning the rates, terms and conditions of expanded interconnection service from the LECs, the information for certain LECs is incomplete. The LECs' failure to provide sufficient information hinders any evaluation as to the reasonableness of the charges. However, the Price Outs requested by the Bureau reveal an extremely large variation in the effective monthly rate per DS1 ($10.80 to $68.83 per month based on RAF'd rates, see Table 1 below). This wide range of charges reflects the disparate assumptions which underlie the LECs' expanded interconnection charges.

Table 1.

LEC	Mo. Cost Per DS1	Mo. Cost Per DS1 RAF'd
Ameritech	$30.63	$29.69
Bell Atlantic	79.63	35.82
BellSouth	36.66	28.27
Cincinnati Bell-Group 1	38.95	36.27
Group 2	75.02	68.83
Group 3	57.58	53.30
NYNEX	30.53	30.16
Pacific Bell	36.98	36.98
Rochester	13.60	13.58
SNET	56.08	56.08
Southwestern Bell	24.50	24.77
U S West	54.73	48.21
United - FL Avon Park	12.19	10.80

Sprint's comments on the issues set forth in the Bureau's Designation Order are contained in Appendix A. In general, the Direct Cases filed in support of expanded interconnection charges by most LECs are incomplete. Most LECs fail to justify as reasonable the high capital outlays upon which the nonrecurring charges are based. The Direct Cases reveal numerous methods employed by the LECs to inflate charges. For example, rather than using embedded costs for Floor Space charges, many LECs use much higher market rental rates or current construction costs. Although the LECs are providing service to their competitors, such competitors should be treated as any other LEC customer, and the LEC must develop costs in a manner comparable to those for other access services. If the LECs assign costs greater than those which their own services must effectively bear, their competitors will be at a disadvantage. Also, the LECs should not be allowed to inflate expanded interconnection charges by inclusion of equipment not required to provide interconnection service, such as repeaters.

Some LEC use nonrecurring charges to recover recurring expenses, other than depreciation and the cost of money. This methodology produces a mismatch between the revenue received and the expenses incurred, and should therefore be disallowed.

The Bureau requested further justification for many terms and conditions in the tariffed offerings. Sprint believes (1) that full prepayment of nonrecurring charges is unwarranted; (2) that BellSouth's requirement for $25 million of comprehensive general liability insurance is unjustified; (3) that the LECs' liability for their negligence or willful misconduct should be similar to that for other access services; and (4) that U S West and Cincinnati Bell should be directed to permit the full use of letters of agency.

The LECs have the burden of proof to provide justification for their high expanded interconnection charges and they have largely failed to do so. The Commission therefore has the right to prescribe rates based on the information before it. Sprint recognizes that expanded interconnection is new and uncharted territory and that in some cases the cost variations may be due to the differences in the way the LECs have conceptualized the service and the associated costs. The Commission should also reject the use of any improper costing methodology which produces excessively high rates and direct carriers to remove any overly burdensome or restrictive terms and conditions.

Moreover, if the Commission is troubled by the extreme variations in the rates, and if it believes it has adequate basis for prescribing just and reasonable rates, it should do so. If the Commission does not feel it has an adequate record before it, it should identify those carriers whose costs are above average, give them an opportunity to submit (on an expedited basis) additional justification for their proposed cost levels, and require the filing of whatever additional data the Commission believes is necessary to enable it to prescribe lawful rates.

Respectfully submitted,

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1. **THE LECS' ITEMIZED COST INFORMATION IS INADEQUATE (Issue A(b)).**

The first issue identified by the Bureau for investigation is whether the rate levels established by the LECs in their expanded interconnection tariffs are excessive. In order to resolve this issue the Bureau requested detailed Tariff Review Plans ("TRPs") for specific expanded interconnection functions which it defined. It further requested detailed itemized cost information "[i]n order to evaluate the reasonableness of investments, expenses and taxes listed in each TRP chart" (Designation Order, para. 22(h)(1)). The response of most of the LECs, in general, is inadequate to justify the extremely high charges for expanded interconnection.

A. Ameritech. Ameritech provides little additional insight into its non-recurring Central Office Buildout Charge except through the information partitioning the total charge into the functions specified by the Bureau (Appendix B). The investment and rates for the various functions are as follows:

Function	Investment	Rate
Common Construction	$ 9,382.88	$10,649.77
DC Power Installation	16,086.00	18,257.98
Interconn. Specific Constr.	290.16	281.17
Security Installation	7,845.76	8,905.05
Active Security	0.00	1,146.07
Total	$28,966.04	$39,240.04

Ameritech provides no explanation as to the development of its investments or of the cost of the materials and hours of labor required for such investments; nor has Ameritech given any indication of how it allocated the common construction costs among the collocators. Absent such information, the reasonableness of the costs allocated to each collocator cannot be determined. Finally, Ameritech's total rate of $39,240.04 does not match its RAF'd rate of $40,212.53, thereby violating the Bureau's requirement that "the sum of the illustrative partitioned rates must equal the rate for the filed, unpartitioned rate element" (para. 17, fn. omitted.).

B. BellSouth. BellSouth develops its $51,660 nonrecurring charge for Space Construction by taking the net present value of the depreciation, cost of money and income tax expenses for a 44.7 year life of the investments in the security installation, interconnection-specific construction, and construction provisioning functions (Partitioned Rate Element List for Space Construction Charge). Other than partitioning the total investment of $36,191.74 into these three functions, BellSouth fails to provide any additional support for the value of the investments which underlie the development of its expenses.

BellSouth has also omitted its Application Charge ($4,490.00) and Space Preparation Charge ($1,350.00) from its TRPs. Assuming the functions performed under these rate elements are part of the Construction Provisioning Function defined by the Bureau, labor charges of $5,840 are incurred in addition to expenses ($1,779.47 annually) associated with the Construction Provisioning investment of $9,311.74.[3] Such charges for applying

[3] BellSouth has provided no justification for an investment of $9,311.74 for "the costs of ordering and provisioning the interconnector's space and cage" (Designation Order, fn. 44) which are not capital-intensive.

for interconnection space and ordering and provisioning the interconnector's space and cage appear to be excessive.

C. <u>NYNEX.</u> NYNEX has failed to partition its Construction Charge of $54,900 into the functions identified by the Bureau or to file TRPs containing this charge. It has also failed to provide any additional information other than that provided in its Transmittal No. 165 concerning the costs associated with the 12 nodes that have been installed. NYNEX's Direct Case is thus incomplete, and NYNEX should be directed to provide, at a minimum, the appropriate TRPs and partitioning of its Construction Charge.

D. <u>Pacific Bell.</u> Pacific Bell has two extremely high nonrecurring charges: Central Office Space Per 100 Square Feet and Central Office Space - Establishment of Collocation Infrastructure Area per C.O. While Pacific states that it assumed four collocators on average per central office for recovery of recurring costs (D&J at 7 and Appendix H, p. 67), it does not specify the number of collocators it assumes for nonrecurring costs with the exception of the Interconnector-Specific Construction Function, for which it assumes the building of two enclosures and allocates the ironwork/cable costs between two collocators. Clearly, the allocation of nonrecurring costs between two collocators rather than four will significantly inflate the costs. Further, the cost associated with the installation of the Security System, which range from $10,414 to $21,961 per collocator (Appendix M, p. 67), seem extremely high if it is assumed that there will be four collocators per central office. Further justification for the nonrecurring charges, including information supporting the installation of a high-cost security system is required.

E. Southwestern Bell. Southwestern Bell's Direct Case provides some insight into the development of its Tenant Accommodation Charge ("TAC"). However, the rates, which appear to be excessive, cannot be properly evaluated without additional information. Southwestern Bell states that the total cost of the modifications to the Central Office were divided by the forecasted number of interconnectors, but it provides neither the total cost to modify the office or the number of interconnectors. For large offices, for example, the total cost for modifications may be as low as $71,487 if just one interconnector is assumed, or as high as $285,948 if four are assumed. An evaluation of the reasonableness of the rate would clearly be aided by the provision of the costs associated with each "Design Solution Floor Plan" presented in Appendix 3.

In Southwestern Bell's Price Out (Appendix 5), the individual nonrecurring charges have not been shown. Rather, Southwestern Bell provides an aggregate "Construction Charges" of $46,641.55, which include the TAC, House Electric, POT Power Arrangement, Transmission Arrangement, Engineering Design and Cable Pull. In order to derive the Cable Pull and TAC charges used in the Price Out, the charges for the remaining items

($20,588.00)[4] may be subtracted from the total charge ($46,641.55) for a difference of $26,052.55. Given the wide range of charges for the TAC ($13,526 to $71,488), the figure of $26,052.55 seems low for both the TAC and Cable Pull. Thus, Southwestern Bell should be directed to disaggregate its "Construction Charges" and to provide its assumptions underlying the average TAC and Cable Pull charges.

F. U S West. The nonrecurring charges proposed by U S West are inflated by "a construction contingency percentage of 20% to account for unknown barriers and obstacles that require additional labor and materials, an Americans With Disabilities Act ("ADA") construction provision as a percentage (20%) of the construction cost, and professional engineering consulting service as a percent (15%) of all construction costs" (D&J at 11-12). If the construction estimates are reasonable, there should be no need for a 20% contingency. The cost of compliance with the ADA, as it applies to the construction of a cage or other facilities used to provide interconnection service to collocators, should be specifically estimated and included in the construction costs, rather than based on a 20% factor. The application of 40% to the costs for "contingencies" or possible

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Charge	Rate
Cage	$ 5,060.00
House Electric	2,207.00
POT Power	10,500.00
DS1 Transmission	1,258.00
Engineering Design	1,563.00
Total	$20,588.00

costs is unacceptable. Further, no justification for a professional engineer consultant is provided, and the charges for this service should also be disallowed, unless it is fully justified.

Under the Construction Provisioning Function, U S West states that the 1993 loaded rate for a Construction Management Project Engineer is $95.64. This rate includes a "corporation overhead cost of $13.08 and a property related overhead cost of $21.37. Given that an overhead ratio is subsequently applied to the direct costs of this nonrecurring function to develop the price, overhead costs may be double-recovered. U S West should provide additional support to demonstrate that such double-recovery is not occurring.

2. THE USE OF NONRECURRING CHARGES TO RECOVER RECURRING COSTS IS IMPROPER (Issue A(e)(1)).

The Bureau notes that certain carriers developed nonrecurring charges "based on the present value of recurring costs associated with the capital outlay" (Designation Order, para. 22 (e)(1)). It states that discounting depreciation expense and the costs of money over the life of an investment should yield the original capital outlay. However, the LECs have added additional expenses in the net present value calculation, and the Bureau has requested additional justification from the LECs that "developed nonrecurring charges based on discounted taxes, maintenance or costs other than depreciation expense and cost of money" (id.). The addition of such expenses is improper and yields excessive nonrecurring charges.

Ameritech, BellSouth and U S West have developed certain costs in this manner. Ameritech states that its Central Office Buildout charge is based on the net present value of depreciation, cost of money, income taxes, maintenance, ad valorem and gross receipts taxes for 7 years using a discount rate of 10.9%. BellSouth develops its Space Construction charge by taking the net present value of the depreciation, cost of money and income tax expenses for a 44.7 year investment life. U S West "computed nonrecurring charges for the entrance enclosure (manhole/handhole), conduit/innerduct, core drill, fiber cable splicing..., fiber placement..., riser, -48 volt DC power cable installation and virtual fiber optic cable rate elements, based on the discounted value of recurring costs associated with the capital outlay" (D&J at 44). Such recurring costs include taxes, administrative and other expenses.

The upfront recovery of recurring expenses associated with an investment outlay, other than depreciation and the cost of money, through a nonrecurring charge will result in a mismatch of revenues and expenses, and should therefore not be allowed. If the LECs determine there are recurring expenses, such as maintenance, which will be incurred over the life of the investment, then the charges to recover such expenses should be recurring as well. Recurring revenues can be directly associated with the recurring costs as they are incurred.

The LECs which have proposed to recover recurring expenses through nonrecurring charges make no attempt to address the issue of how they will associate the revenues received from the collocator in year 1 with the expenses incurred in later years. They do not, for example, describe the treatment of taxes; the nonrecurring charge revenue, which includes taxes, will be received in year 1, but the tax expense will be incurred over the time period selected by the LEC in which to recognize (for tax purposes) the revenues received. The issue arises as to when the LEC will pay taxes: in year 1 when the revenue is received, or in future years when the revenue is recognized for tax purposes.

Furthermore, under this method of cost recovery, there can be no assurance that costs will not be double-recovered. If another collocator replaces the initial collocator prior to the end of the number of year of recurring expenses included in the nonrecurring charge, there will be double-recovery unless the second is not charged. However, if the second collocator is not charged, the method of recovery is clearly unrelated to cost and discriminatory.

3. **FLOOR SPACE CHARGES SHOULD BE BASED ON EMBEDDED COSTS (Issue A(f)).**

The LECs use three methodologies for developing their Floor Space Charges: (1) embedded cost, (2) market rental value, and (3) replacement construction cost. These different methodologies have produced a wide range in the cost per square foot. The Bureau has therefore requested additional justification for the development of the Floor Space Charges and further explanation concerning the application of additional maintenance, administrative and other costs to market rental rates.

The embedded cost methodology is the only reasonable methodology to be used in the development of rates for expanded interconnection service. Under this methodology, an average cost per square foot for the LECs' investment in central office land and buildings is developed. The average monthly cost is based on the appropriate depreciation, maintenance, administration and other costs associated with such investment. BellSouth, NYNEX, United and Centel use this methodology.

Moreover, the use of embedded costs is consistent with the development of rates under price caps. In addressing concerns about excessively high prices for new services in the <u>Part 69/ONA Order</u>, 6 FCC Rcd 4524, the Commission concluded that its new services test should be cost-based. It therefore required LECs introducing new services to submit studies identifying their direct costs. To these direct costs, the LECs then add "an appropriate level of overhead costs to derive the overall price of the new service" (<u>id.</u> at 4531). The direct cost of providing floor space to interconnectors is the cost of the LEC's existing floor space. It is not the construction cost for hypothetical space which the LEC is not--and will not be--constructing, nor is it a derived rental rate for floor space which the LEC would not be renting absent expanded interconnection service. The direct cost should include only those costs associated with the actual, embedded investment.

Market rental rates are the basis of the Floor Space Charges of Bell Atlantic, Southwestern Bell and U S West. The calculations of Bell Atlantic and Southwestern Bell are based on general office rental rates, to which additional costs to recover central office-specific features are added. U S West estimates the market value of space within its buildings.

The use of market value rates higher than rates based on embedded costs, is inappropriate. Generally, the LECs are not in the business of renting space within their central offices to outsiders, and commercial rental rates are not an appropriate starting point for the development of central office costs. The provision of expanded interconnection service by the LECs is not an ordinary business transaction. The LECs are providing service to their competitors and must develop costs in a manner comparable to those for other access services. If the LECs assign costs greater than those which they would assign to themselves, their competitors will be at a disadvantage. Thus, the costing methodology must be consistent with all other allocations made for ratemaking purposes.

To inflate the market rates, the LECs develop numerous adjustment factors. For example, Bell Atlantic develops a component based on the construction costs of features specific to central offices and the cost of capital (D&J at 20). Southwestern Bell develops a ratio of office building construction costs to telephone exchange building construction costs of 1.72 which it applies to the BOMA rental rates (D&J at 11). Neither company demonstrates that there is a linear relationship between construction costs and rental rates, and the factors derived by these companies should be disallowed.

The use of construction costs by Ameritech and Pacific Bell is also improper. The use of the construction cost for new central office space is unreasonable given the Commission finding that physical collocation will not be required where there is insufficient space within the existing central office.[5] Pacific Bell seeks to justify its use of current construction costs on the basis that it is the most appropriate cost for estimating the long run incremental cost ("LRIC") associated with expanded interconnection service (D&J at 38-42). However, the use of current construction costs necessarily assumes that all new investment is required to provide expanded interconnection service. This is simply not the case. A large proportion of central offices have vacant space due to the reduction in the size of the switches, and new buildings are not required. In those offices without sufficient space for expanded

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[5] In the Expanded Interconnection Order, the Commission stated: "We find that requiring LECs to expand their facilities or relinquish space reserved for their future use...is nether reasonable nor likely to serve the public interest" (7 FCC Rcd at 7408).

interconnection, new construction costs are not relevant because, as noted above, the LEC is not required to provide physical collocation. Thus, Pacific Bell's argument that current construction costs are relevant LRIC costs is seriously flawed.

Pacific Bell and U S West have inflated the Floor Rental Rates by factors to reflect space used to provide access to the collocators' cages.[6] Such inflation of the rental rates should not be permitted. An adjustment may be warranted for common space in the central office (if such common space has not otherwise been reflected in the rate). However, any further adjustment for space to access the collocators' areas is improper because access by the interconnectors to other common areas will be extremely restricted for security purposes. Thus, there should be no additional charge for the common areas to which the collocators have access.

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[6]Pacific Bell used a 30% factor (D&J at 11), and U S West used a 40% factor (D&J at 22).

4. **THE COST OF REPEATERS SHOULD BE INCLUDED ONLY AS REQUIRED BY DISTANCE (Issue A (h)(1)).**

As the Bureau notes, some companies have included the cost of repeaters in the development of the cross-connection service. In particular, Bell Atlantic included repeaters in 100% of its cross-connected circuits, and U S West included repeaters in the majority of its circuits. BellSouth estimated that repeaters would be required in approximately 10 percent of the circuits, and Ameritech added repeaters only where "the transmission limitations stipulated in the tariff for cross-connection are exceeded" (D&J, Appendix A at ii). GTE, NYNEX, Pacific Bell and Southwestern Bell included no repeaters.[7]

According to Bell Atlantic, it "has utilized repeater arrangements identical to those described above [i.e., in 100% of its cross-connected circuits] since divestiture in 1984" (D&J at 25). U S West states that "the distance limitations for a DS1 is 85 feet and for a DS3 is 27 feet" (D&J at 54). Pacific Bell, however, states that "repeaters may be necessary where the distance from the collocation area to Pacific Bell's special access network elements exceeds 655 feet for DS1 and 450 feet for DS3" (D&J at 44).[8] Given the fact that GTE and three RBOCs included no repeaters and BellSouth and Pacific both claim

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[7]However, under GTE's tariff, the customer will be responsible for the provision of repeater equipment within the partitioned space if it is required.

[8]BellSouth also cited these length limitations (D&J, Exhibit 4 at 6).

repeaters are unnecessary except for circuits of several hundred feet, Bell Atlantic and U S West have not justified their inclusion of repeater costs, and any costs in excess of those required under the standard reflected in the BellSouth and Pacific tariffs should be disallowed.

5. **THE REQUIREMENT FOR FULL PRE-PAYMENT OF NONRECURRING CHARGES IS UNREASONABLE (Issue B(d)).**

The Bureau has requested an explanation from "LECs that require interconnectors to pay some or all construction or other nonrecurring charges prior to commencement of the work...why they believe this is reasonable" (para. 31(d)). Most of the LECs require an upfront payment of 50% of the nonrecurring charges and 50% upon completion of the work (see, e.g., Bell Atlantic at 32; GTE at 31; NYNEX at Appendix B pgs. 5-6 of 7; Southwestern Bell at 25; and U S West at 68-69). This is a reasonable requirement which is consistent with the structured payments generally found in commercial construction contracts.

Both BellSouth and Pacific Bell believe that the full charges should be paid prior to the commencement of work. These LECs argue that they should not be required to finance the construction. This policy is unreasonable because it will require the interconnector to pay for service prior to the provision of the access service by the LEC. This is contrary to the LECs' policies for other access services. Further, the interconnector will have no leverage if the work is not performed to its satisfaction.

NYNEX states that "[i]f the costs incurred by the NTCs at the time of termination by the interconnector are less than the amount paid by the interconnector to the NTCs, the NTCs will refund the difference" (id.). This is a reasonable policy which should be reflected in all LEC tariffs.